



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

PETITION NO. 17 OF 2013

ARTICLES 22 & 23 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE COMPANIES ACT, CAP 486 LAWS OF KENYA

AND

IN THE MATTER OF ARTICLE 50 OF THE ARTICLES OF ASSOCIATION OF MOGUSII FARMERS GROUP COMPANY LTD

BETWEEN

ELIZAPHAN NYAKUNDI NYATUGA.....PETITIONER

AND

DAVID OMBUKI MOTANYA.....1<sup>ST</sup> RESPONDENT

NELSON GICHANA MABEYA.....2<sup>ND</sup> RESPONDENT

CHARLES ONDARI ACHOKI.....3<sup>RD</sup> RESPONDENT

MESHACK OCHENGO.....4<sup>TH</sup> RESPONDENT

DR. STEVE ORINA OKERIO.....5<sup>TH</sup> RESPONDENT

RULING

1. The application before the court this morning is a Notice of Motion dated 31<sup>st</sup> May 2017 made under section 225 of the Companies Act, 2015 seeking an order;

[2] THAT this Honourable Court be pleased to grant leave to the applicant to issue a notice of disqualification order against **David Ombuki Motanya, Nelson Gichana Mabeya, Charles Ondari Achoki, Meshack Ochengo, Dr. Steve orina Okerio, Barare Oburu, Mose Nyamondo and Benard Maosa** being the Directors of Mogusii Farmers Group Limited.

2. The grounds upon which the application is made are set out in the face of the Motion as follows;

(a) THAT the directors conduct in the management of Mogusii Farmers Company Limited since 2009 is such that they are unfit to manage the affairs of the company any further in that they have since the said year failed to file Annual Financial Returns and Annual General Meetings Minutes with the Registrar of Companies and hence are candidates for a disqualification order of this Honourable Court.

(b) THAT the directors of the said company failed to expose to the shareholder the books of accounts and balance sheet of the company contrary to provisions of **Article 129 of the Mogusii Farmers Company Limited** and therefore the shareholders apprehensive that the affairs of the company are managed in secrecy.

(c) THAT although the directors of the said company indicated that they were to give interim dividends as well as final dividends of

the year 2016 and sought ratification of the shareholders, this did not happen.

(d) THAT in the Annual General Meeting held on 13<sup>th</sup> January, 2017, the elections of new directors were not free, fair and transparent in that instead of allowing shareholders to elect directors from the three regional blocks namely **Nyangweta, Mabundu** and **Nyakongo**, they nominated the directors from the said regional blocks hence no election was conducted.

(e) THAT unless leave to give notice of a disqualification order is issued against the directors, their continued mismanagement of the said company will drive it to insolvency.

3. I have considered the grounds set out vis-a-vis the cause of action herein set out in the petition. The petition filed herein dated 16<sup>th</sup> May 2013 seeks the following reliefs;

(a) An order of injunction against the respondents restraining them from convening a Special General Meeting at the aforesaid factory on 19<sup>th</sup> May, 2013.

(b) An order directing that the respondents convene and hold an Annual General Meeting before the Special General Meeting.

(c) Costs of this petition be provided for.

(d) Any other order this court may deem fit to grant.

4. The need for the company to hold its Annual General Meeting was expressed by Okwany J., who noted in her ruling of 14<sup>th</sup> December 2016 that the company had not held its Annual General Meeting for seven (7) years. She therefore directed that;

*(i) That the plaintiff company holds its annual general meeting in the next 30 days from today's date and elections of new directors be an item of agenda in the annual general meeting.*

5. Since the key prayer in the petition was for an annual general meeting to be held, it is apparent that the company having held its annual general meeting, the petition was exhausted in that the prayers granted in the said ruling merged into the petition leaving nothing further to be determined. The Motion before the court today is a different cause of action filed relating to an Annual General Meeting held on 13<sup>th</sup> January 2017.

6. In the circumstances, I strike out the Notice of Motion dated 31<sup>st</sup> May 2017. Since neither the respondents or advocates appeared to defend the matter there shall be no order as to costs.

**Dated and delivered at Kisii this 19<sup>th</sup> day of September 2018.**

**D.S MAJANJA**

**JUDGE**

Mr. Migiro for the applicant